

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARIO D. CHORAK, DMD, P.S., individually
and on behalf of all others similarly situated,

Plaintiff,

No.

HARTFORD CASUALTY INSURANCE COMPANY,

Defendant.

COMPLAINT-CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, MARIO D. CHORAK, DMD, P.S. (“CHORAK”), individually and on behalf of all other similarly situated members of the defined national class (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Hartford Casualty Insurance Company (“Hartford” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship

1 from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in
2 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff's state
3 law claims under 28 U.S.C. § 1337.

4 2. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(3) because the
5 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing
6 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
7 this District and the state of Washington.
8

9 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
10 § 1331(b)(2) because a substantial part of the events or omissions giving rise to the claims at
11 issue in this Complaint arose in this District. Plaintiff's businesses are located in Seattle, King
12 County. This action is therefore appropriately filed in the Seattle Division because a substantial
13 portion of the events giving rise to this lawsuit arose in King County.
14

III. PARTIES

15 4. Plaintiff, Mario D. Chorak, DMD, P.S., is an orthodontic business with locations
16 at 14300 SE Petrovitsky Road, Renton, Washington, and 3022 78th Avenue SE, Mercer Island,
17 Washington.
18

19 5. Defendant Hartford Casualty Insurance Company is an insurance carrier
20 incorporated and domiciled in the State of Indiana, with its principal place of business in
21 Hartford, Connecticut.
22

IV. NATURE OF THE CASE

23 6. Due to COVID-19 and a state-ordered mandated closure, Plaintiff cannot provide
24 dental orthodontic services. Plaintiff intended to rely on its business insurance to keep its
25 business as a going concern. This lawsuit is filed to ensure that Plaintiff and other similarly-
26

1 situated policyholders receive the insurance benefits to which they are entitled and for which
2 they paid.

3 7. Defendant Hartford issued one or more insurance policies to Plaintiff, including
4 Spectrum Business Owners Policy and related endorsements, insuring Plaintiff's property and
5 business practice and other coverages, with effective dates of June 27, 2019 to June 27, 2020.
6

7 8. Plaintiff's business property includes property owned and/or leased by Plaintiff
8 and used for general business purposes for the specific purpose of dental orthodontics and other
9 business activities.
9

10 9. Defendant Hartford's insurance policy issued to Plaintiff promises to pay
11 Plaintiff for "direct physical loss of or physical damage to" to covered property.

12 10. Defendant Hartford's insurance policy issued to Plaintiff includes Business
13 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
14 Authority Coverage.
15

16 11. Plaintiff paid all premiums for the coverage when due.
16

17 12. On or about January 2020, the United States of America saw its first cases of
18 persons infected by COVID-19, which has been designated a worldwide pandemic.
19

20 13. In light of this pandemic, Washington Governor Jay Inslee issued certain
21 proclamations and orders affecting many persons and businesses in Washington, whether
22 infected with COVID-19 or not, requiring certain public health precautions. Among other
23 things, Governor Inslee's "Stay Home, Stay Healthy" order required the closure of all non-
24 essential businesses, including Plaintiff's business.
24

25 14. By order of Governor Inslee, orthodontists including Plaintiff were prohibited
26 from practicing orthodontics but for urgent and emergency procedures.
26

15. Plaintiff's property sustained direct physical loss and/or damage related to COVID-19 and/or the proclamations and orders.

16. Plaintiff's property will continue to sustain direct physical loss or damage covered by the Hartford policy or policies, including but not limited to business interruption, extra expense, interruption by civil authority, and other expenses.

17. Plaintiff's property cannot be used for its intended purposes.

18. As a result of the above, Plaintiff has experienced and will experience loss covered by the Hartford policy or policies.

19. Upon information and belief, Hartford has denied or will deny all similar claims for coverage.

V. CLASS ACTION ALLEGATIONS

20. This matter is brought by Plaintiff on behalf of itself and those similarly situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

21. The Classes that Plaintiff seeks to represent are defined at this time as:

A. ***Business Income Breach of Contract Class:*** All persons and entities in the United States insured under a Hartford policy with Business Income Coverage who suffered a suspension of their practice at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Business Income claim was denied by Hartford.

B. ***Business Income Declaratory Relief Class:*** All persons and entities in the United States insured under a Hartford policy with Business Income Coverage who suffered a suspension of their practice at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

1 C. *Extended Business Income Breach of Contract Class:* All persons and
2 entities in the United States insured under a Hartford policy with Extended Business
3 Income Coverage who suffered a suspension of their business at the covered premises
4 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
5 other civil authorities and whose Extended Business Income claim was denied by
6 Hartford.

7 D. *Extended Business Income Declaratory Relief Class:* All persons and
8 entities in the United States insured under a Hartford policy with Extended Business
9 Income Coverage who suffered a suspension of their business at the covered premises
10 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
11 other civil authorities.

12 E. *Extra Expense Breach of Contract Class:* All persons and entities in the
13 United States insured under a Hartford policy with Extra Expense Coverage who sought
14 to minimize losses from the suspension of their business at the covered premises in
15 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
16 and/or other civil authorities and whose Extra Expense claim was denied by Hartford.

17 F. *Extra Expense Declaratory Relief Class:* All persons and entities in the
18 United States insured under a Hartford policy with Extra Expense Coverage who sought
19 to minimize losses from the suspension of their business at the covered premises in
20 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
21 and/or other civil authorities.

22 G. *Civil Authority Breach of Contract Class:* All persons and entities in the
23 United States insured under a Hartford policy with Civil Authority Coverage who

1 suffered a suspension of their practice and/or extra expense at the covered premises
2 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
3 other civil authorities and whose Civil Authority claim was denied by Hartford.

4 H. *Civil Authority Declaratory Relief Class:* All persons and entities in the
5 United States insured under a Hartford policy with Civil Authority Coverage who
6 suffered a suspension of their practice at the covered premises related to COVID-19
7 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.
8

9 22. Excluded from the Classes are Defendant's officers, directors, and employees;
10 the judicial officers and associated court staff assigned to this case; and the immediate family
11 members of such officers and staff. Plaintiff reserves the right to amend the Class definitions
12 based on information obtained in discovery.

13 23. This action may properly be maintained on behalf of each proposed Class under
14 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

15 24. **Numerosity:** The members of the Class are so numerous that joinder of all
16 members would be impractical. Plaintiff is informed and believes that the proposed Class
17 contains thousands of members. The precise number of class members can be ascertained
18 through discovery, which will include Defendant's records of policyholders.

19 25. **Commonality and Predominance:** Common questions of law and fact
20 predominate over any questions affecting only individual members of the Class. Common
21 questions include, but are not limited to, the following:
22

23 A. Whether the class members suffered covered losses based on common
24 policies issued to members of the Class;
25

1 B. Whether Hartford acted in a manner common to the class and wrongfully
2 denied claims for coverage relating to COVID-19 and/or orders issued by Governor
3 Inslee, other Governors, and/or other civil authorities;

4 C. Whether Business Income Coverage in Hartford's policies of insurance
5 applies to a suspension of practice relating to COVID-19 and/or orders issued by
6 Governor Inslee, other Governors, and/or other civil authorities;

7 D. Whether Extended Business Income Coverage in Hartford's policies of
8 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
9 by Governor Inslee, other Governors, and/or other civil authorities;

10 E. Whether Extra Expense Coverage in Hartford's policies of insurance
11 applies to efforts to minimize a loss at the covered premises relating to COVID-19
12 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities;

13 F. Whether Civil Authority Coverage in Hartford's policies of insurance
14 applies to a suspension of practice relating to COVID-19 and/or orders issued by
15 Governor Inslee, other Governors, and/or civil authorities;

16 G. Whether Hartford has breached its contracts of insurance through a
17 blanket denial of all claims based on business interruption, income loss or closures
18 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
19 other civil authorities;

20 H. Whether, because of Defendant's conduct, Plaintiff and the class
21 members have suffered damages; and if so, the appropriate amount thereof; and

1 I. Whether, because of Defendant's conduct, Plaintiff and the class
2 members are entitled to equitable and declaratory relief, and if so, the nature of such
3 relief.

4 26. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
5 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
6 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct
7 that give rise to the claims of the members of the Class and are based on the same legal theories.
8

9 27. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
10 the classes and has retained class counsel who are experienced and qualified in prosecuting class
11 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
12 Class.

13 28. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or
14 Varying Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
15 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
16 common to all members of the class. The prosecution of separate actions by individual members
17 of the classes would risk inconsistent or varying interpretations of those policy terms and create
18 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
19 could also impair the ability of absent class members to protect their interests.
20

21 29. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
22 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other
23 members of the proposed classes making injunctive relief and declaratory relief appropriate on a
24 classwide basis.
25

30. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is superior to all other available methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages sustained by the classes are likely to be in the millions of dollars, the individual damages incurred by each class member may be too small to warrant the expense of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court system would be unduly burdened by individual litigation of such cases. A class action would result in a unified adjudication, with the benefits of economies of scale and supervision by a single court.

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

*(Brought on behalf of the Business Income Coverage Declaratory Relief Class,
Extended Business Income Declaratory Relief Class, Civil Authority Declaratory Relief Class,
and Extra Expense Declaratory Relief Class)*

31. Previous paragraphs alleged are incorporated herein.

32. This is a cause of action for declaratory judgment pursuant to the Declaratory

Judgment Act, codified at 28 U.S.C. § 2201.

33. Plaintiff Chorak brings this cause of action on behalf of the Business Income Coverage Declaratory Relief Class, Extended Business Income Declaratory Relief Class, Civil Authority Declaratory Relief Class, and Extra Expense Declaratory Relief Class.

34. Plaintiff Chorak seeks a declaratory judgment declaring that Plaintiff Chorak and class members' losses and expenses resulting from the interruption of their business are covered by the Policy.

35. Plaintiff Chorak seeks a declaratory judgment declaring that Hartford is responsible for timely and fully paying all such claims.

Count Two—Breach of Contract

(Brought on behalf of the Business Income Coverage Breach of Contract Class, Extended Business Income Breach of Contract Class, Civil Authority Breach of Contract Class, and Extra Expense Breach of Contract Class)

36. Previous paragraphs alleged are incorporated herein.

37. Plaintiff Chorak brings this cause of action on behalf of the Business Income Coverage Breach of Contract Class, Extended Business Income Breach of Contract Class, Civil Authority Breach of Contract Class, and Extra Expense Breach of Contract Class.

38. The Policy is a contract under which Plaintiff Chorak and the class paid premiums to Hartford in exchange for Hartford's promise to pay plaintiff and the class for all claims covered by the Policy.

39. Plaintiff Chorak has paid its insurance premiums.

40. Plaintiff submitted a claim to Hartford for the direct physical loss or damage to Plaintiff's property covered under the Hartford policy related to COVID-19 and/or the proclamations and orders; Hartford denied Plaintiff's claim for coverage. On information and belief, Hartford has denied coverage for other similarly situated policyholders.

41. Denying coverage for the claim is a breach of the insurance contract.

42. Plaintiff Chorak is harmed by the breach of the insurance contract by Hartford.

VII. PRAYER FOR RELIEF

43. 1. A declaratory judgment that the policy or policies cover Plaintiff's losses and expenses resulting from the interruption of the Plaintiff's business related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other authorities.

2. A declaratory judgment that the defendant is responsible for timely and fully paying all such losses.

3. Damages.

4. Pre- and post-judgment interest at the highest allowable rate.

5. Reasonable attorney fees and costs.

6. Such further and other relief as the Court shall deem appropriate.

VIII. JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all claims so triable.

DATED this 24th day of April, 2020.

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